

(2) Tribal lands as defined in this part; or

(3) Any area within one-half mile outside the boundary of any unit of the national park system.

(c) This part does not apply to a commercial air tour operator conducting a commercial air tour operation—

(1) Over the Grand Canyon National Park;

(2) Over that portion of tribal lands within or abutting the Grand Canyon National Park;

(3) Over any land or waters located in the State of Alaska; or

(4) While flying over or near the Lake Mead Recreation Area, solely as a transportation route, to conduct a commercial air tour over the Grand Canyon National Park.

§ 136.3 Definitions.

For purposes of this part—

(a) *Commercial air tour operator* means any person who conducts a commercial air tour operation.

(b) *Existing commercial air tour operator* means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on April 5, 2000.

(c) *New entrant commercial air tour operator* means a commercial air tour operator that—

(1) Applies for operating authority as a commercial air tour operator for a national park or tribal lands; and

(2) Has not engaged in the business of providing commercial air tour operations over the national park or tribal lands for the 12-month period preceding enactment.

(d) *Commercial air tour operation*—

(1) Means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies—

(i) Below 5,000 feet above ground level (except for the purpose of takeoff or landing, or as necessary for the safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take

action to ensure the safe operation of the aircraft);

(ii) Less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary); or

(iii) Except as provided in § 136.5.

(2) The Administrator may consider the following factors in determining whether a flight is a commercial air tour operation for purposes of this part—

(i) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(ii) Whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

(iii) The area of operation;

(iv) The frequency of flights conducted by the person offering the flight;

(v) The route of flight;

(vi) The inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

(vii) Whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and

(viii) Any other factors that the Administrator and Director consider appropriate.

(3) For purposes of § 136.5, means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park.

(e) *National park* means any unit of the national park system. (See title 16 of the U.S. Code, section 1, *et seq.*)

(f) *Tribal lands* means that portion of Indian country (as that term is defined in section 1151 of title 18 of the U.S. Code) that is within or abutting a national park.

(g) *Administrator* means the Administrator of the Federal Aviation Administration.

(h) *Director* means the Director of the National Park Service.

(i) *Superintendent* means the duly appointed representative of the National Park Service for a particular unit of the national park system.